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UNITED NATIONS CONFERENCE
ON
DECLARATION OF DEATH
OF MISSING PERSONS

FINAL ACT

Signed at Lake Success, New York, on 6 April 1950

and

CONVENTION
ON THE
DECLARATION OF DEATH OF MISSING PERSONS

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FINAL ACT



UNITED NATIONS

1950

FINAL ACT OF THE UNITED NATIONS CONFERENCE ON DECLARATION OF DEATH OF MISSING PERSONS

The General Assembly of the United Nations, by resolution 369 (IV) dated 3 December 1949, decided to convene an international conference of Government representatives with a view to concluding a multilateral convention on the subject of declaration of death of missing persons.

The United Nations Conference on Declaration of Death of Missing Persons met at the temporary headquarters of the United Nations, Lake Success, New York, during the period from 15 March to 6 April 1950.

The Governments of the following States were represented at the Conference by delegations:

Belgium	Pakistan
Bolivia	Peru
Brazil	Philippines
Burma	Sweden
China	Syria
Cuba	Turkey
Denmark	United Kingdom of
Ecuador	Great Britain and
France	Northern Ireland
Greece	United States of
India	America
Israel	Uruguay
Netherlands	Venezuela
Nicaragua	Yugoslavia

The Governments of the following States were represented at the Conference by observers:

Canada	Iran
Egypt	Mexico
Ethiopia	Thailand

The International Refugee Organization also was represented by an observer.

The Conference elected Mr. Sture Petren, of Sweden, as President, and Mr. Adnan Kural, of Turkey, and Dr. Francisco V. Garcia Amador, of Cuba, as Vice-Presidents.

The Conference had before it and used as a basis for discussion the draft convention (document E/1368) prepared by the *ad hoc* Committee on Declaration of Death of Missing Persons which met in Geneva in June 1949 pursuant to resolution 209 (VIII) of the Economic and Social Council.

As a result of the deliberations of the Conference and of a Drafting Committee appointed by the Conference, the Conference established and opened for accession by States the Convention on Declaration of Death of Missing Persons, of which the English, French and Spanish texts are appended to this Final Act.

At the request of certain delegations the Conference decided to place on record the following:

- (a) "All matters not specifically dealt with by the Convention, including the question of reappearance of missing persons, remain within the domain of the domestic law of the Contracting States;
- (b) "Nothing in this Convention shall be construed as impairing, with respect to cases contemplated in the Convention, the operation of the principle of reciprocity or of existing agreements among Parties to the Convention concerning mutual recognition and execution of foreign acts or judgments or, in general, as preventing a more liberal practice."

IN WITNESS WHEREOF the respective representatives and observers have signed this Final Act, fully reserving the position of their Governments with respect to accession to the Convention.

DONE at Lake Success, New York, this sixth day of April one thousand, nine hundred and fifty, in a single copy in the Chinese, English, French, Russian and Spanish languages each text being equally authentic. This Final Act and the

annexed Convention shall be deposited with the Secretary-General of the United Nations, who will send certified copies to the Members of the United Nations and to the non-member States which are Parties to the Statute of the International Court of Justice and to any other non-member State to which an invitation has been addressed by the Economic and Social Council pursuant to article 13 of the Convention.

For the Kingdom of Belgium:
Joseph Nisot

For Nicaragua:

For Bolivia:
Ed. Anze Matienzo

For Pakistan:
R.S. Chhatari

For Brazil:
Gilberto Amado

For Peru:
T. Cabada
19/IV/1950

For the Union of Burma:
Tin Maung

For the Philippine Republic:

For China:

For Sweden:
Sture Petré

For Cuba:
F.V. García Amador
25/IV/50

For Syria:
N. Rifai

For Denmark:
Holten Eggert

For Turkey:
A. Kural

For Ecuador:
Wilson Córdova

*For the United Kingdom of Great
Britain and Northern Ireland:*
J.E.S. Fawcett

For France:
Guy Deltel

For the United States of America:
John Maktos

For Greece
Alexis Kyrrou

For Uruguay:

For India:
B. Rajan

For Venezuela:
V.M. Pérez Perozo

For Israel:
Jacob Robinson

For the Kingdom of the Netherlands:
C.A. de Meijere

For Yugoslavia:
Djuro Ninčić

OBSERVERS

For Canada:
G.K. Grande

For Iran:
Dr. Djalal Abdoh

For Egypt:
Abdel-Hamid Abdel-Ghani

For Mexico:
J. Escobar

For Ethiopia:
John H. Shaw

For Thailand:
Dr. Manu Amatayakul

The President of the Conference:
Sture Petré

The Assistant Secretary-General, in charge of the Legal Department:
Dr. I. Kerno

The Executive Secretary of the Conference:
Oscar Schachter

**UNITED NATIONS CONFERENCE
ON
DECLARATION OF DEATH
OF MISSING PERSONS
CONVENTION**



UNITED NATIONS

1950

CONVENTION ON THE DECLARATION OF DEATH OF MISSING PERSONS

PREAMBLE

CONSIDERING that military events and racial, religious, political and national persecutions have caused, in the course of the Second World War, the disappearance of persons whose death cannot be established with certainty,

CONSIDERING that this situation has produced difficulties of a legal nature which have placed a great number of human beings in a precarious position,

BEING CONVINCED that the solution of these difficulties calls for measures of international co-operation,

THE CONTRACTING STATES AGREE AS FOLLOWS:

ARTICLE 1

Scope

1. The present Convention provides for declarations of death of persons whose last residence was in Europe, Asia or Africa who have disappeared in the years 1939-1945, under circumstances affording reasonable ground to infer that they have died in consequence of events of war or of racial, religious, political or national persecution.

However, members of armed forces serving in Europe, Asia or Africa shall not, by reason only of such service, be considered as having had their residence in those continents.

2. Contracting States may, by notification to the Secretary-General of the United Nations, extend its application to persons having disappeared subsequently to 1945 under similar

circumstances. Such extension shall only apply as between those States which have made such notification.

3. The persons covered by paragraphs 1 and 2 of this article will be hereafter referred to as "missing persons".

ARTICLE 2

Competent tribunals

1. The term "tribunal", as used in the present Convention, shall apply to all authorities empowered *ratione materiae* to determine the fact of death under the governing domestic law.

2. Subject to paragraph 1 of this article, the following tribunals shall be competent *ratione loci* to receive applications and to issue declarations of death:

- (i) The tribunal of the place of the last domicile of the missing person or of his last voluntary or involuntary residence;
- (ii) The tribunal, in the country of which the missing person was a national, competent under applicable domestic law or, in its absence, the tribunal of the capital of that country;
- (iii) The tribunal of the place of the *situs* of property of the missing person;
- (iv) The tribunal of the place of decease of the missing person;
- (v) The tribunal of the place of domicile or residence of the applicant in the case of an application filed by any of the following relatives: ascendants, descen-

dants, adopted children and their issue, brothers and sisters and their issue, uncles, aunts, or spouse.

3. However, any Contracting State shall be entitled to designate for the whole or a part of its territory one or several tribunals to which it will transfer or assign the competence which the preceding paragraph would have conferred on any of its tribunals. Such designation shall be communicated to the Secretary-General.

4. When an applicant has applied to a tribunal considered by him as competent under the preceding paragraphs of the present article, he shall not be entitled to make a subsequent application to another tribunal unless he has withdrawn his first application before judgment has been rendered or unless the first tribunal does not regard itself as competent to deal with the application.

ARTICLE 3

Application for declaration of death

1. Any competent tribunal in each contracting State shall, at the instance of any natural or juridical person having a legal interest in the matter or of an authority charged with the protection of the public interest, or acting on its own motion, issue a declaration of death of a missing person provided that all of the following requirements are met:

- (i) Such missing person had his last residence in Europe, Asia or Africa;
- (ii) Such missing person disappeared in the years 1939-1945;
- (iii) The circumstances of the disappearance afford reasonable ground to infer that the missing person died in consequence of events of war or of racial, religious, political or national persecution;
- (iv) A period of at least five (5) years has elapsed since the last known date on which the missing person was probably

alive, as indicated by the reception of news or the occurrence of any other fact before the tribunal;

- (v) In the course of the proceedings for the issuance of such declaration, public notice has been given reasonably designed to afford the alleged decedent an opportunity to make known that he is alive.

2. Only the following natural or juridical persons shall be considered as having a legal interest within the meaning of the preceding paragraph:

- (i) Persons who may be entitled to, or have an interest, other than that of a creditor, in any part of the missing person's estate under a will or intestacy;
- (ii) Persons who may be entitled to, or have an interest, other than that of a creditor, in any property the devolution or distribution of which may depend either on the survival or death or on the date of death of the missing person;
- (iii) Persons whose personal status may be affected by the survival or death of the missing person; and
- (iv) Persons desirous of adopting the minor children of the missing person.

ARTICLE 4

Date of death

1. In issuing a declaration of death, the competent tribunal shall determine the date and the time of death, taking into consideration any evidence or indication regarding the circumstances or the period in which death occurred.

2. In the absence of any such evidence or indication, the date of death shall be fixed at the date of disappearance.

3. The date of disappearance shall be the date of the last known indication of the existence of the missing person. It shall be determined by the tribunal taking into account facts brought

to its attention and, in particular, the last news of the missing person.

4. In the absence of any evidence or indication regarding the time of death, it shall be declared to have taken place at the last moment of the declared day of death.

ARTICLE 5

Effects of declarations of death

1. Declarations of death issued in conformity with the present Convention in one Contracting State shall constitute in the other Contracting States *prima facie* evidence of death and the date of death until contrary evidence is submitted.

2. However, the Contracting States may by special arrangements, which shall be notified to the Secretary-General, grant broader effects than those provided for in the preceding paragraph to the declarations of death issued in their respective territories.

ARTICLE 6

Effects of declarations issued prior to the entry into force of the Convention

Declarations of death issued in one of the Contracting States before the entry into force of the Convention shall have, in the territory of other Contracting States, the validity of a declaration issued under this Convention if the issuing tribunal certifies that the declaration satisfies the conditions and requirements which are at present contained in articles 1, 2 and 3 of this Convention. However, property or other rights acquired in such territory before such a declaration is presented shall not thereby be impaired.

ARTICLE 7

Res judicata of declarations issued prior to the entry into force of the Convention

This Convention shall not be construed as impairing the force of *res judicata* of final declara-

tions of death having acquired the force of *res judicata* before the entry into force of the Convention.

ARTICLE 8

International Bureau for Declarations of Death

1. There shall be established within the framework of the United Nations an International Bureau for Declarations of Death. The Secretary-General of the United Nations shall determine its seat, composition, organization and method of operation.

2. A central registry shall be established in the Bureau.

3. The working languages of the International Bureau shall be English and French.

4. The Bureau shall be empowered to receive from Governments or individuals authenticated copies of Declarations of Death of Missing Persons, as defined in article 1. of the present Convention, issued before the entry into force of the present Convention.

ARTICLE 9

Communication of applications

1. A tribunal to which an application for declaration of death is made or which has initiated such a proceeding on its own motion, shall, within fifteen days, communicate to the International Bureau the following information, in so far as possible:

- (i) Full name of the missing person;
- (ii) Names and, if practicable, addresses of the closest relatives;
- (iii) Place and date of birth of the missing person;
- (iv) His habitual residence;
- (v) His last known voluntary or involuntary residence;
- (vi) Any information as to his nationality;

- (vii) The last known date on which the missing person was probably alive according to the application;
- (viii) Names and addresses of the applicant, his interest and relationship, if any, to the missing person;
- (ix) Date of institution of the proceedings.

2. If the Bureau ascertains that a proceeding is already pending before another tribunal, it shall immediately notify the tribunal to which the later application has been made. Such tribunal shall suspend its proceedings pending a final decision by the other tribunal and shall inform the applicant of the tribunal before which proceedings have already been instituted and of the name of the other applicant. The Bureau shall also inform the tribunal to which the first application has been made of the application subsequently made to another tribunal.

ARTICLE 10

Publication and communication of decisions

1. A tribunal issuing a decision under the present Convention shall communicate its decision to the International Bureau within fifteen days from the date on which such decision becomes final, whether the decision is positive or negative. Such communication shall contain the date of the decision and the date fixed as the date of death, or a short statement of the grounds for denying the application.

2. The International Bureau shall publish, periodically, lists of all applications and final decisions as well as of certifications issued in accordance with article 6, which are communicated to it, and it shall also include therein any declarations of death which it may receive under paragraph 4 of article 8. It shall simultaneously send notice of the applications, decisions and certifications to the close relatives whose names are communicated to it in accordance with paragraph 1 (ii) of article 9 of the present Convention. The International Bureau shall also transmit to any

tribunal in which an application has been filed for a declaration of death the grounds for any previous denial by any other tribunal of an application for a declaration of death concerning the same missing person.

3. A declaration of death shall not be issued in accordance with the present Convention until the expiration of three months from the publication of the application by the International Bureau.

4. If a final declaration of death is under reconsideration in the country where it was issued under the present Convention, the application for reconsideration and the decision which will be rendered thereon shall be subject to the provisions of paragraphs 1 and 2 of this article. This provision shall also apply to the declarations certified in accordance with article 6.

ARTICLE 11

Letters rogatory

1. The Contracting States shall be bound to execute letters rogatory relating to proceedings under the Convention in accordance with their domestic law and practice and international agreements concluded or to be concluded.

2. The transmission of letters rogatory shall be effected by the usual methods. However, Contracting States may also transmit such letters rogatory through the International Bureau.

ARTICLE 12

Exemption from costs, and free legal aid

Aliens instituting proceedings under the present Convention shall be granted exemption from all costs and charges, and free legal aid in all cases where, under the national law, such exemption or aid is granted in like proceedings to nationals of the country where a proceeding is pending. Indigent applicants shall be exempt from the requirements of posting security for costs which are imposed on aliens alone.

ARTICLE 13

Accession

1. The present Convention shall be open for accession on behalf of Members of the United Nations, non-member States which are Parties to the Statute of the International Court of Justice, and also any other non-member State to which an invitation has been addressed by the Economic and Social Council passing upon the request of the State concerned.

2. Accession shall be effected by the deposit of a formal instrument with the Secretary-General of the United Nations.

3. The word "State" as used in the present Convention shall be understood to include the territories for which each Contracting State bears international responsibility, unless the State concerned, on acceding to the Convention, has stipulated that the Convention shall not apply to certain of its territories. Any State making such a stipulation may, at any time thereafter, by notification to the Secretary-General, extend the application of the Convention to any or all of such territories.

ARTICLE 14

Entry into force

1. The present Convention shall come into force on the thirtieth day following the day of deposit of the second instrument of accession in accordance with article 13.

2. For each State acceding to the Convention after the deposit of the second instrument of accession, the Convention shall enter into force on the thirtieth day following the date of deposit by such State of its instrument of accession.

Article 15

Approval by the General Assembly

The establishment of the International Bureau provided for in article 8 shall require the

approval of the General Assembly of the United Nations.

ARTICLE 16

Notifications by the Secretary-General

The Secretary-General shall inform all Members of the United Nations and the non-member States referred to in article 13:

- (a) Of accessions under article 13;
- (b) Of any stipulations and notifications under paragraph 3 of article 13;
- (c) Of the date on which the Convention has entered into force under paragraph 1 of article 14;
- (d) Of reservations and notifications made under article 19;
- (e) Of notifications made to the Secretary-General under paragraph 2 of article 1;
- (f) Of designations communicated to the Secretary-General under paragraph 3 of article 2;
- (g) Of arrangements under paragraph 2 of article 5.

ARTICLE 17

Duration

1. The present Convention shall be valid for a period of five years from the date of its entry into force under paragraph 1 of article 14.

2. However, the proceedings initiated during, but not concluded before, the expiration of the validity of this Convention may be continued on the initial basis until a final decision is reached, and the effects with regard to such decisions will be the same as if they had been rendered before the expiration of the Convention.

ARTICLE 18

Settlement of disputes

If a dispute shall arise between Contracting States relating to the interpretation or application of the present Convention, and if such dis-

pute has not been settled by other means, it shall be referred to the International Court of Justice. The dispute shall be brought before the Court either by the notification of a special agreement or by a unilateral application of one of the Parties to the dispute.

ARTICLE 19

Reservations

Any State may subject its accession to the present Convention to reservations which may be formulated only at the time of accession.

If a Contracting State does not accept the reservations which another State may have thus attached to its accession, the former may, provided it does so within ninety days from the date on which the Secretary-General will have transmitted the reservations to it, notify the Secretary-General that it considers such accession as not

having entered into force between the State making the reservation and the State not accepting it. In such case, the Convention shall be considered as not being in force between such two States.

ARTICLE 20

Deposit of Convention, and languages

The present Convention of which the Chinese, English, French, Russian and Spanish texts are equally authentic shall be deposited with the Secretary-General who will transmit certified copies thereof to the Members of the United Nations, to the non-member States which are Parties to the Statute of the International Court of Justice, and to any other non-member State to which an invitation has been addressed by the Economic and Social Council pursuant to article 13.